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**STATUTE OF FRAUDS—ORAL LEASE.**—An oral agreement to lease land for a term of one year was made in July, the lease to begin the following January. A statute provided in one section that agreements by their terms not to be performed within a year from the making thereof were unenforcible unless in writing; and in a separate section that an agreement to lease land for a longer term than one year was unenforcible unless in writing. *Held*, the oral agreement is valid. *Sullivan v. Bryant* (Okl.), 136 Pac. 412.

It is contended that such agreement is a continuous contract from the making thereof until the termination of the lease. But a distinction must be taken between the actual lease and the agreement to lease. *Tillman v. Fuller*, 13 Mich. 113. The contract to lease is performed on the making of the lease and does not extend through the term granted in the lease. *Young v. Dake*, 5 N. Y. 463. It is submitted that in the principal case there were two separate transactions; the agreement to lease which was completely performed on the making of the lease, and the actual lease. This view is maintained by the weight of authority. *Bateman v. Maddox*, 88 Tex. 546, 26 S. W. 51; *Hayes v. Arlington*, 108 Tenn. 494, 68 S. W. 44; *Bumgarten v. Cohn*, 141 Wis. 315, 124 N. W. 288. *Contra*, *Greenwood v. Strother*, 91 Ky. 482, 16 S. W. 138. The conflict of authority on this point is due to the failure of the courts to distinguish the contract to lease from the actual lease.

**SURETYSHIP—LIABILITY OF SURETY FOR INTEREST.**—*Held*, interest begins to run against the surety on the bond of a city treasurer only from the time of demand or suit. *City of Dickinson v. White* (N. D.), 143 N. W. 754.

This decision is in accord with the majority view. *Folz v. Trust Co.*, 201 Pa. 583, 51 Atl. 379; *Frink v. Express Co.*, 82 Ga. 33, 8 S. E. 862, 3 L. R. A. 482; *McDonald v. Loewen*, 145 Mo. App. 49, 130 S. W. 52. And in *Degnon v. McLean Co.*, 184 N. Y. 544, 76 N. E. 1093, a surety was held liable for interest on an unliquidated debt from the time of demand.

In other jurisdictions the contrary is held. *Cassady v. Trustees*, 105 Ill. 560; *Ellyson v. Lord*, 124 Iowa 125, 99 N. W. 582. See also *Wyman v. Robinson*, 73 Me. 384, 40 Am. Rep. 360. In an Indiana case a surety on a promissory note was by the express terms of the contract exempted from liability for interest, but the court charged him with interest after the maturity of the note. *McDonald v. Huestis*, 1 Ind. App. 275, 27 N. E. 509. And the surety on a replevin bond is liable for interest from the time judgment in the action of replevin is entered against the principal. *Brainard v. Jones*, 18 N. Y. 35. The same doctrine as to appeal bonds is held in *Whereatt v. Ellis*, 103 Wis. 348, 79 N. W. 416, 74 Am. St. Rep. 365.

The conflict of the courts seems to have resulted from failure to observe the distinction between the broad and the narrow use of the term surety. It would seem that a surety, using the word in its strict technical sense, ought to be liable for interest from the time the principal's contract is broken; for the surety is in most respects simply a joint promisor. But a guarantor, often loosely called a surety, is not in any

sense a joint promisor; and hence he should be liable for interest only from the time he is required to make payment and fails to do so. The distinction referred to, however, is not observed by the authorities.

In *Bank of Brighton v. Smith*, 12 Allen (Mass.) 243, 90 Am. Dec. 144, a surety was held not liable for interest till demand because his "undertaking by its express terms was not that of a joint promisor." The words quoted draw the distinctions referred to above as that which should be observed on principle.

**TAXATION—REMEDY AT LAW—ILLEGAL TAXES.**—In a suit to enjoin the collection of a municipal tax on personalty, which was alleged to be illegal on the ground of non-residence of the plaintiff, it was *Held*, the remedy at law is inadequate, since an action to recover taxes lies only where they have been paid under duress of goods and the officer could avoid this remedy by bringing an action at law for the taxes instead of distraining, and injunction is the proper remedy. *City of Lancaster v. Pope* (Ky.), 160 S. W. 509.

This reasoning is hardly satisfactory, for it does not appear that the illegality of the tax could not be set up in the action by the collector, thus affording an adequate remedy at law. And the same court in *Gates v. Barrett*, 79 Ky. 295 (cited in the principal case), bases the doctrine on the alleged principle that the officer, acting in good faith and under color of right is justified by his process, and is not liable as a trespasser. See *ante*, p. 87.

**TORTS—INJURY TO ANOTHER'S BUSINESS.**—The defendant engaged in business, not for his own pleasure and profit but simulated competition for the sole purpose of maliciously injuring plaintiff. *Held*, actionable. *Boggs v. Duncan-Shell Furniture Co.* (Iowa), 143 N. W. 482.

Formerly it was stated to be the general rule that an act legal in itself cannot be rendered actionable by the motive which induced it. *Guethler v. Altman*, 26 Ind. App. 587, 60 N. E. 355, 84 Am. St. Rep. 313

But the common law grows and adapts itself to changing conditions, and competition of the character simulated in the principal case is, according to the trend of modern authority, actionable provided malice obtains. *Dunshee v. Standard Oil Co.*, 152 Iowa 618, 132 N. W. 371, 36 L. R. A. (N. S.) 263; *Tuttle v. Buck*, 107 Minn. 145, 119 N. W. 946, 22 L. R. A. (N. S.) 599, 131 Am. St. Rep. 446, 16 A. & E. Ann. Cas. 807; *W. Va. Trans. Co. v. Standard Oil Co.*, 50 W. Va. 611, 40 S. E. 591, 56 L. R. A. 804, 88 Am. St. Rep. 895.

The only practicable objection that can be raised to these decisions which morally are most expedient, is that they give business men the opportunity of invoking the powers of the courts to search the motives of rivals and competitors. But this objection, even if it amounts to anything, ought not to cause alarm.

**WILLS—PRESUMPTIONS—ALTERATIONS.**—An unexplained alteration appeared on the face of a will offered for probate. *Held*, it is presumed to